IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.4273 of 2007
Date of Decision: 06.09.2007

Ismail .... Petitioner

versus

Noor Mohd. & ors .... Respondents

Before: Hon'ble Mr. Justice R.S. Madan

Present: Mr. Lokesh Sinhal, Advocate for the petitioner.

R.S. Madan, J

1. This civil revision petition is directed against the order dated 27.07.2007 rendered by Additional Civil Judge (Sr. Division), Ferozepur Jhirka (Gurgaon), vide which he dismissed the application of the petitioner (defendant) for setting aside the ex parte order dated 17.01.2001 passed against him.

2. Brief facts of the case are that a suit was filed by the proforma respondent and the present petitioner challenged therein the sale deed executed by the present petitioner in favour of his daughter defendant No.4 with regard to his share in the suit land.

3. In the said suit, the petitioner received a summon of the said case and appeared on 13.06.2001 through his counsel and the case was posted for filing of written statement on behalf of the defendants.

4. It is further the case of the petitioner that plaintiff-respondent had assured the present petitioner that they would not proceed with the case and would withdraw the same on the next date of hearing i.e. 17.01.2001. Relying upon their assurance the present petitioner did not appear and was under the impression that the suit might have been

withdrawn by the plaintiff-respondent. It was in the month of August, 2006 that the defendant came to know that the suit has not been withdrawn by the plaintiff despite of assurance given to him.

5. He thus moved an application for setting aside the ex parte order.

6. The learned Additional Civil Judge (Sr. Division), Ferozepur Jhirka (Gurgaon), after perusing the order sheet found that the present petitioner who was defendant No.5 in the suit did not appear w.e.f. 17.01.2001 and hence he was proceeded ex parte. He did not file any written statement despite the fact that he put his appearance through his counsel. The learned Additional Civil Judge gaining strength from the Order 9 Rule 7, Civil Procedure Code, was of the view that it was imperative for the defendant-petitioner who have assigned no cause or reasons for his previous non-appearance but the petitioner fails to show sufficient cause to the satisfaction of the court for his inability to appear. Hence the ex parte order passed against petitioner (defendant No.5) could not be set aside. Even there is a delay of more than five years in filing of the application, which has not been explained. Taking advantage from the observations of the Hon'ble Supreme Court in **Bhanu Kumar Jain vs. Archna Kumar & ors, 2005 (3) LJR 650,** whereas it is observed that application for setting aside the ex parte decree is maintainable even at a later stage provided the defendant would have to show sufficient cause for his non-appearance. Reference was also made to **Vijay Kumar Madan and others vs. R.N. Gupta Technical Education Society and others reported as 2002 (3) LJR 10**. In both the authorities, it was incumbent upon the petitioner to prove that there was a sufficient cause which refrained him from appearing in the court. No sufficient cause or reasoning has been assigned by the petitioner for his non-appearance in this case which entitles him for setting aside of the ex parte order dated 17.01.2001.

7. Resultantly, the application for setting aside of the ex parte order was dismissed by the learned Additional Civil Judge (Sr. Division), Ferozepur Jhirka (Gurgaon) appears to be justified.

8. It is contended on behalf of the petitioner that due to assurance given by the plaintiff, he stopped appearing in the suit before the trial court from 17.01.2001 onwards. Therefore, there was a sufficient cause for him for not appearing in the court of Additional Civil Judge, (Jr. Division), Ferozepur, Jhirka.

9. After going through the impugned order of the learned Additional Civil Judge, I am of the view that the learned trial court has specifically averred that defendant No.5 is a formal party and would not be interested in the suit. His case is already being contested by his daughter. Therefore, he did not appear before the court concerned. No reasonable explanation was put forth on the part of the petitioner for non-appearance when he was proceeded against ex parte.

10. I find no merit in this revision petition, therefore, the same is hereby dismissed.

(R.S. Madan)
Judge

06.09.2007
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